

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JESSICA ELIZONDO, Individually as
Next of Kin, and as Administrator of
the Estate of PATRICIA BERKE,

Plaintiff,

v.

LIFE CARE CENTERS OF
AMERICA, INC. and GWINNETT
OPERATIONS, LLC,

Defendants.

Civil Action File No.

NOTICE OF REMOVAL

Pursuant to 28. U.S.C. § 1441 *et seq.*, Defendants LIFE CARE CENTERS OF AMERICA, INC. (“LCCA”) and GWINNETT OPERATIONS, LLC (“GOL”), (hereinafter “these Defendants”) hereby remove the civil action captioned *Jessica Elizondo, Individually as Next of Kin, and as Administrator of the Estate of Patricia Berke, v. Life Care Centers of America, Inc. and Gwinnett Operations LLC*, from the State Court of Gwinnett County, Civil Action File No. 23-C-02625-S3, to the United States District Court for the Northern District of Georgia, Atlanta, Georgia Division. Removal is based upon the following:

Removal Based on Diversity Jurisdiction

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

Description of the Action

2. On April 30, 2021, Plaintiff originally filed a Complaint against these Defendants in the State Court of Fulton County, Civil Action File No 21EV2632 alleging negligence related to the medical care delivered to patient Patricia Berke with that case ultimately being dismissed without prejudice on December 9, 2022.

3. On April 20, 2023, Plaintiff filed a renewal action against these Defendants in the State Court of Gwinnett County, State of Georgia, Civil Action File No. 23-C-02625-S3 for treatment beginning December 12, 2018 through and including January 1, 2019 when the patient ultimately passed away. *See* Plaintiff's Complaint ¶¶7 through ¶12 attached hereto as (Exhibit "A").

Consent for Removal

4. The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and requires that "all defendants who have been properly joined and served" consent to the removal. 28 U.S.C. § 1446(b)(2)(A); *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v.*

Tri-Cities Printing Pressmen and Assistants' Local 349, 427 F.2d 325, 326-27 (5th Cir. 1970).

5. These Defendants, the only defendants properly joined and served within the meaning of 28 U.S.C. § 1446, file the removal of this Action.

The Amount in Controversy Requirement

6. In diversity cases, 28 U.S.C. § 1332(a) requires that the matter in controversy exceed the sum or value of \$75,000.

7. The Plaintiff's Complaint states that Plaintiff seeks to recover reasonable damages. Plaintiff's last demand was received December 9, 2022, for the amount of 1.8 million. There was no other prayer for relief of a specified amount contained within the Complaint.

The Diversity of Citizenship Requirement

8. For diversity jurisdiction under 28 U.S.C. § 1332(a)(1), the parties must be citizens of different states.

9. Plaintiff is a resident and citizen of the State of Georgia and is entirely diverse from these Defendants. *See* Plaintiff's Responses to LCCA's First Continuing Interrogatories to Plaintiff, at No. 1.

10. Defendant Life Care Centers of America, Inc., is a Tennessee Corporation authorized to conduct business in the State of Georgia and may be served with process through its Registered Agent, Corporation Service Company, 2

Sun Court, Suite 400, Peachtree corners, Gwinnett County, Georgia 30092, and is entirely diverse from Plaintiff.

11. Defendant Gwinnett Operations, LLC, is a Tennessee Limited Liability Company authorized to conduct business in the State of Georgia and may be served with process through its Registered Agent, Corporation Service Company, 2 Sun Court, Suite 400, Peachtree corners, Gwinnett County, Georgia 30092, and is entirely diverse from Plaintiff.

Compliance with Deadline for Removal

12. This case first became removable upon receipt of Plaintiff's Complaint received via Sheriff's Entry of Service dated April 26, 2023. Under these circumstances, pursuant to 28 U.S.C. §1446(b)(3), "a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."

13. This action has been pending for less than 1 year, so removal is not barred by 28 U.S.C. §1446(c).

14. These Defendants have initiated removal within 30 days of receipt of the paper establishing that the case is removable. Based on 28 U.S.C. § 1446(b)(3), this Notice of Removal is timely filed.

The State Court Proceeding

15. The state court proceeding is identified as follows: *Jessica Elizondo, Individually as Next of Kin, and as Administrator of the Estate of Patricia Berke, v. Life Care Centers of America, Inc. and Gwinnett Operations LLC*, from the State Court of Gwinnett County, Civil Action File No. 23-C-02625-S3. A notice regarding removal will be filed with the State Court of Gwinnett County upon filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

All State-Court Documents

16. Pursuant to 28 U.S.C. § 1446(a), the following state-court filings are attached hereto: Plaintiff's Complaint (Exhibit "A"); Summons to LCCA (Exhibit "B"), Summons to Gwinnett Operations, LLC (Exhibit "C"), Civil Case Filing Form (Exhibit "D"), Sheriff's Entry of Service-GOL (Exhibit "E"), Sheriff's Entry of Service-LCCA (Exhibit "F").

WHEREFORE, these Defendants exercise their right under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the State Court of Gwinnett County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 19th day of May 2023.

NALL & MILLER, LLP

235 Peachtree Street, N.E.
North Tower, Suite 1500
Atlanta, Georgia 30303-1418
404-522-2200 (telephone)
404-522-2208 (facsimile)
leschleman@nallmiller.com

By: Laura D. Eschleman
LAURA D. ESCHLEMAN
Georgia Bar No. 142295

*Attorneys for Life Care Centers of
America, Inc. and Gwinnett Operations,
LLC*

CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 19th day of May, 2023.

NALL & MILLER, LLP

235 Peachtree Street, N.E.
North Tower, Suite 1500
Atlanta, Georgia 30303-1418
404-522-2200 (telephone)
404-522-2208 (facsimile)
leschleman@nallmiller.com

By: Laura D. Eschleman
LAURA D. ESCHLEMAN
Georgia Bar No. 142295

*Attorneys for Life Care Centers of
America, Inc. and Gwinnett
Operations, LLC*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the within and foregoing **NOTICE OF REMOVAL** via the e-filing system, Odyssey eFileGA, which caused all parties-of-record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Robert M. Gardner, Jr., Esq.
Gardner Law Firm
P.O. Box 310
Winder, Georgia 30680
rg@gardnerlawfirm.com

This 19th day of May 2023.

235 Peachtree Street, N.E.
North Tower, Suite 1500
Atlanta, Georgia 30303-1418
404-522-2200 (telephone)
404-522-2208 (facsimile)
leschleman@nallmiller.com

NALL & MILLER, LLP

By: Laura D. Eschleman
LAURA D. ESCHLEMAN
Georgia Bar No. 142295

*Attorneys for Life Care Centers of
America, Inc. and Gwinnett Operations,
LLC*